

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

DECISION AND ORDER
13-CR-22

JAMES ALLEN,

Defendant.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr. for supervision of all pretrial proceedings. Defendant filed a motion to suppress statements and physical evidence as well as a motion to dismiss certain counts of the Indictment based upon a Speedy Trial Act violation.¹ (Dkt. Nos. 22 and 23) The Government opposed both motions. (Dkt. No. 27) Following a December 10, 2013 evidentiary hearing, the parties filed post-hearing memoranda. (Dkt. Nos. 34 and 35)

On August 15, 2014, Magistrate Judge Schroeder issued a Report and Recommendation recommending that defendant's motion to suppress statements and physical evidence be denied, that Counts 1-10 of the Indictment be dismissed without prejudice, and that defendant's motion to dismiss Counts 11-23

¹ Defendant initially moved to dismiss the entire Indictment on Speedy Trial Act grounds, however defendant later clarified that the motion to dismiss applies only to the first 10 counts of the Indictment.

of the Indictment be denied. (Dkt. No. 39) Defendant filed objections on October 2, 2014 and the Government filed a response on October 16, 2014. (Dkt. Nos. 43 and 44) Oral argument was held before this Court on November 3, 2014, at which time the Court considered the matter submitted.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon *de novo* review and after reviewing the submissions of the parties and hearing oral argument, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, defendant's motion to suppress statements and physical evidence is denied, Counts 1-10 of the Indictment are dismissed without prejudice, and defendant's motion to dismiss Counts 11-23 of the Indictment is denied as moot. The parties shall appear before this Court on December 5, 2014 at 12:30 p.m. for a status conference and/or meeting to set a trial date as to Counts 11-23 of the Indictment.

SO ORDERED.

Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: December 1, 2014